THE HONOURABLE SHRI JUSTICE R.SUBHASH REDDY.

WRIT PETITION Nos. 9286, 9310, 9328, 8889, 8896, 8941, 8995, 9463, 9470, 9475, 10152, 10167, 10236, 10237, 10239, 10242, 10243, 10244, 10245, 10382, 10030, 10031, 11577, 11578, 11579, 11580, 11801, 10060, 10047, 9936, 10045, 10261, 10263, 10280, 10509, 11238, 14575, AND 12607 OF 2006.

Dated April, 2007

W.P.No. 9286 of 2006:

Between:
G.Ravinder

…Petitioner

And
The Commissioner for Endowments,
Andhra Pradesh, Hyderabad and another.

…Respondents.

COMMON ORDER:

In this batch of cases, the orders of transfer of Office Holders and servants working in endowments and charitable institutions, governed by the provisions of the Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act, 1987, are challenged. The said orders of transfer are passed by the Commissioner of Endowments, in exercise of powers vested in him under Section 39 read with Section 8 of the A.P. Charitable and Hindu Religious Institutions and Endowments Act, 1987 (for short "the Act") on the ground of better administration of the institutions. Though individual orders are passed, all the orders of transfer are passed on similar lines.

For the purpose of convenience in disposal of the batch of cases, I refer to the facts in Writ Petition No.9286 of 2006.

The order under challenge in Writ Petition No.9286 of 2006 was passed in Rc.No.A3/11094/2006-18 (M.Z.III) by the Commissioner of Endowments. The petitioner who is working in the establishment of Sri Raja Rajeswara Swamy Devasthanam, Vemulawada is transferred and posted in the establishment of Sri Laxmi Narasimha Swamy Devasthanam, Yadagirigutta.

The averments as stated in the affidavit filed in support of the writ petition are thus:

Petitioner's wife is working as School Assistant at Shatrajpally, Vemulawada Mandal and after a long gap and lot of efforts she was posted there and they are living together at Vemulawada. His mother, who is aged about 70 years is a T.B. patient and is also suffering with kidney problems and the petitioner is taking care of his mother and there is no other person to attend to his mother and give medical assistance. The impugned order of transfer is arbitrary exercise of power with mala fide intention and no opportunity was given to the petitioner and had a notice been given, the petitioner would have satisfied the authorities for his retention at the present place. There are no medical facilities available at the transferred place for the treatment of his mother and there is also no possibility of his wife's transfer as she is working at Zilla Parishad High School, Shatrajpally. Though the petitioner submitted representation stating that both wife and husband are working, but without considering the said representation, the impugned orders are passed. The impugned orders are arbitrary and

also contrary to G.O.Ms.No.71, dated 1.4.2006, and thus pleading, the petitioner sought for setting aside of the said orders.

Common counter-affidavit has been filed by the Commissioner of Endowments, Hyderabad stating as under:

Some awful incidents have come to light, which rocked the Assembly resulting in ordering of Vigilance and A.C.B. enquiries on the incidents of Zonnawada and Sullurupet temples, wherein the employees resorted to printing of duplicate tickets and running parallel counters within the temple premises by curtailing the income of the temple and sold the tickets of various Sevas for their personal wrongful gains, and such type of tendency was said to have developed only because of allowing the temple employees at one place for a longer term. To curb such type of tendency and also for better administration of the institutions, it is felt necessary to effect transfer of longstanding temple employees by invoking the provisions of Section 39 of the Act. A meeting was convened with all the Executive Officers of Major temples including Additional Commissioners and they felt that transfers of longstanding employees have to be effected in the interest of better administration. In the said meeting, the Executive Officers informed that because of the longstanding, many employees developed vested interest while keeping in touch with the local people, suppliers, lease holders, contractors, tenants of the temples etc. resulting in financial loss to the temples. They are misusing their office and lobbying with the bidders in public auctions being conducted from time to time, as a result of which, the income of the institutions could not be increased and the administration of the institutions has become very difficult for the executive authorities since many employees are continuing at one place for longer time. After elaborate discussion with the Executive Officers of the rank of Joint Commissioners and Deputy Commissioners with regard to the promotions and other aspects, it was decided to keep the lien of the transferred employees in the parent temples only and to give promotions as and when their turn comes in the parent department. The employees very well know that temple service is transferable as provided under Section 39 of the Act, and, therefore, they cannot complain of the transfers without questioning the validity of Section 39 of the Act. The writ petition is liable to be dismissed on that ground alone. The Commissioner of Endowments is empowered to transfer any temple employee from one temple to another temple as per Section 39 and only draft rules were framed under the said Section. The contention of the petitioners that the Rules inG.O.Ms.No.888, dated 8.12.2000 were framed under this Section is false as the said rules were framed under Section 35(4) of the Act and those rules only deal with the qualifications, method of recruitment and temporary appointments, pay and allowances, discipline and conduct of the temple employees and they do not deal with the transfers of employees. Rule 33 has no application with regard to transfer. The transfer of an employee does not alter the conditions. The transfer is an incident of service and the present transfers will not affect any service conditions of the employees. The persons who were transferred earlier have not lost their seniority in their parent temple and there is also no financial loss to the transferred employees. The promotional prospects of the employees transferred are not affected as their lien will be kept with parent temple only. The contention of the petitioners that once they are transferred, they will lose their seniority is only a myth and the said plea is

raised only to get away with the transfer orders. If there is any ambiguity or inconsistency with regard to transfer of employees in Rule 33, the same has to give way to the provisions of Section 39 of the Act. In the counter-affidavit it has been stated as to how many employees have been transferred and as to how many have joined and from which institution to which institution, which shows that half of the transferred employees have joined at the new stations. Some of the petitioners herein have also joined at the transferred places. Most of the petitioners herein originally belong to other institutions and are presently working in the present temples for more than three years after being transferred under the provisions of Section 39 and they cannot question the present orders of transfer after being benefitted by the earlier orders. Petitioners have alternative remedy under Section 93 of the Act before the Government against the orders of the first respondent. Thus stating, he sought for the dismissal of the writ petition.

To the same effect is also the counter affidavit filed by the respondent No.3 – the Executive Officer, Sri Bramaramba Mallikarjuna Swamy Devasthanam, Srisailam, Kurnool District in Writ Petition No. 9463 of 2006.

Heard Shri G.Vidyasagar, Shri P.Naveen Rao, Shri K.V.N.Bhupal, Shri Ch.Dhanamjaya and other counsel appearing for the petitioners in various writ petitions, Shri C.V.Mohan Reddy, learned Advocate-General and the learned Standing Counsel for Endowments appearing on behalf of the respondents.

It is argued by the learned counsel for the petitioners that though the orders are in the nature of transfer, but they are affecting their service conditions and promotional avenues and are passed in arbitrary exercise of power by the Commissioner of Endowments. The orders of transfer are mainly questioned on the ground that the said orders are made transferring the employees from one temple/establishment/institution to outside the said establishment, and, as such, are illegal and arbitrary inasmuch as each institution is a unit for the purpose of recruitment, seniority and promotion. Submits the learned counsel that if an incumbent is appointed in an institution/establishment, he cannot be transferred outside the said unit irrespective of length of his service as the said institution/establishment is the unit by itself as per Rule 33 of the A.P.Charitable and Hindu Religious Institutions and Endowments Office Holders and Servants Servants Service Rules, 2000. It is further stated that the cadre strength in each establishment and institution is different as approved by the Commissioner of Endowments and if an employee from the establishment, which is a unit for the purpose of recruitment, seniority and promotion, having less number of employees and where the promotional avenues are more, is transferred to an institution where more number of employees are there, it will affect the seniority and promotion of the transferred employee and thereby affecting their conditions of service. It is also the case of the petitioners that the power invested on the Commissioner under Section 39 of the Act can be exercised only subject to framing of the rules under the said Section and as no rules are framed with regard to transfers under the said Section, the exercise of said power is illegal and arbitrary. Further, the impugned orders of transfer are made without application of mind and basing only on the incidents said to have occurred in one or two temples and the impugned transfers would

amount to casting stigma on all the employees. It is submitted that in respect of the qualifications, method of recruitment, temporary appointments, pay and allowances, discipline and conduct and other conditions of service of the office holders and servants of a charitable or religious institution or endowment, in exercise of the power under Section 35(4) of the Act, Rules titled "The Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Office Holders and Servants Service Rules, 2000 are framed, and, as such, no order of transfer can be passed by the Commissioner in exercise of powers under Section 39 of the Act in contravention of the said rules. Precisely, it is the plea of the petitioners that the Office Holders and servants appointed in one unit/establishment/institution cannot be transferred outside the said unit in the absence of any centralized service or seniority. It is also the case of the petitioners that there was a ban order issued by the Government and the transfer orders are effected contrary to the same even by transferring the employees who are on the verge of their retirement. In any event, the orders transferring the employees enmasse, in reality, are not passed on administrative grounds, but, are passed merely on the basis of one or two incidents, without looking into the administrative needs and exigencies. In support of their case, learned counsel for the petitioners relied on the decisions in **National Hydroelectric Power Corporation Ltd. V. Shri Bhagwan**[1] and **General Officer, Commanding-in-Chief v. Subhash Chandra**[2]**.** So contending, the petitioners sought for setting aside of the orders of transfer in these writ petitions.

On the other hand, it is submitted by the learned Advocate-General appearing for the respondents that when Section 39 of the Act specifically empowers the Commissioner to transfer any Office Holder attached to any charitable or religious institution or endowment from that institution to any other institution, the Commissioner has competency to pass orders of transfer for better administration of the temples. It is submitted that the substantive power given to the Commissioner under Section 39 of the Act, notwithstanding that no rules have been framed or draft rules have not been given effect to, is not taken away. Even in the absence of the rules, as held by the Honourable Supreme Court, where the Act contemplates the power given under a statute to be exercised subject to rules, such power can be still exercised even in the absence of the rules. It is the case of the respondents that the service conditions of an employee of an institution who is transferred to other institution are not at all affected, as for the purpose of seniority and promotion, his lien is maintained in the parent department i.e. in the unit of his appointment. Learned Advocate-General further submitted that Section 35(4) of the Act contemplates fixation of service conditions by the executive with reference to various matters enumerated therein and transfer is not a service condition. It is only an incidence of service and Rule 33 of the Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Office Holders and Servants Service Rules, 2000 speaks of the Unit only for the purpose of recruitment, seniority and promotion. Therefore, Section 35(4) read with Rule 33 deal with service conditions and does not speak of the power of the Commissioner to transfer, which is specifically conferred on him. Learned Advocate-General placed reliance on the judgments in **P.S.R.Subrahmanyam v. Commr., Endowments**[3]**, A.B.Srinivasan v. State of A.P. & Ors.**[4]**, Institute of Chartered**

Accountants of India v. Price Waterhouse[5], **Surinder Singh v. Central Government**[6], **B.Varadha Rao v. State of Karnataka**[7], and, **Ajeet Singh Singhvi v. State of Rajasthan**[8].

Before proceeding with the matter, I deem it necessary to examine certain provisions, which have bearing on the resolution of the issue in this batch of cases. The governance of the Charitable and Hindu Religious Institutions in the State of Andhra Pradesh was earlier regulated by the provisions of the Andhra Pradesh Charitable and Hindu Religious Institutions Act, 1966. When representations were made pointing out some lacunae and inadequacies in the provisions of the said Act in respect of the functioning of the Charitable and Hindu Religious Institutions, the State of Andhra Pradesh Constituted a Commission headed by the former Chief Justice of this High Court. The Commission was requested to suggest measures for better management of the properties of institutions and endowments and utilization of funds for their benefits. The said Commission submitted its report, which was tabled in the Legislative Assembly and the same was accepted with certain modifications and outcome is the new Act i.e. the Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act, 1987. Section 35 of the Act deals with the appointment of office holders and servants etc. and sub-section (4) of said Section states that the qualifications, method of recruitment and temporary appointments, pay and allowances, discipline and conduct and other conditions of service of the office holders and servants of a charitable or religious institution or endowment shall be such as may be prescribed. Section 39 of the Act, which deals with transfer of office holders and servants reads as follows:

> "39. Transfer of office holders and servants:-
> (1) The Commissioner shall have power to transfer any office holder or servant attached to a charitable or religious institution or endowment from that institution or endowment to any other institution or endowment in accordance with such rules as may be made by the Government in this behalf.
> (2) The Deputy Commissioner or the Assistant Commissioner as the case may be having jurisdiction over the area shall have power to transfer any office holder or servant attached to a charitable or religious institution or endowment from that institution or endowment to any other institution or endowment in accordance with such rules as may be made by the Government in this behalf."

Section 7 of the Act postulates that the Commissioner shall be a corporate sole and shall have perpetual succession and common seal and may sue or be sued in his corporate name. Under Section 8 of the Act, the powers and functions of Commissioner and Additional Commissioner are prescribed. Under sub-section (1) of Section 8 of the Act, the administration of all Charitable and Hindu Religious Institutions and Endowments shall be under the general superintendence and control of the Commissioner and such superintendence and control shall include the power to pass any order, which may be deemed necessary to ensure that such institutions and endowments are properly administered and their income is duly appropriated for the purposes for which they were found or exist. Under Section 35(4) of the Act, service rules are framed for Office Holders and Servants in G.O.Ms.No.888, dated 8.12.2000. As per rule 5 of the said rules, the trustee of every institution shall prepare a Schedule of establishment specifying the designations and

the number of posts in each category or grade, their scales of pay, allowances, qualifications, method of recruitment and the same have to be approved by the Commissioner. Rule 12 provides that seniority of an employee in a particular category or post shall count from the date of commencement of probation in that category or post unless he is reduced to a lower rank as a punishment be determined by the date of his first appointment to such category of post. Under Rule 33, each institution or endowment shall be a unit for the purpose of recruitment, seniority and promotion. Under Rule 36, special provisions are made for certain temples, namely, (1) Sri Varaha Lakshminarasimha Swamy Devasthanam, Annavaram, (2) Sri Veera Venkata Satyanarayana Swamy Devasthanam, Bhadrachalam, (3) Sri Seetharama Chandra Swamy Devasthanam, Bhadrachalam, Khammm District, (4) Sri Venkateswara Swamy Devasthanam, Dwaraka Tirumala, West Godavari District, (5) Sri Durga Malleswara Swamy Devasthanam, Vijayawada, Krishna District, (6) Sri Raja Rajeswara Swamy Devasthanam, Vemulawada, Karimnagar District, (7) Sri Lakshmi Narasimha Swamy Devasthanam, Yadagirigutta, Nalgonda District and (8) Sri Bramarambha Mallikarjuna Swamy Devasthanam, Srisailam, Kurnool District. So far as these 8 institutions are concerned, the classes and categories of the employees shall be as sanctioned by the Commissioner from time to time. Apart from the said rules, it is stated that draft rules are framed under Section 39 of the Act, but, however, the said rules are not finalized.

Now, in the context of the above provisions, the contentions advanced by the parties have to be considered. The orders of transfer are passed by the Commissioner for better administration of the institutions governed by the Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act, 1987. Section 39 of the said Act empowers the Commissioner to transfer any office holder or servant attached to a charitable or religious institution or endowment outside the said establishment, however, in accordance with the rules as may be made by the Government. In the instant case, no rules have been framed as provided under Section 39 of the Act. Therefore, the question is whether the power under Section 39 of the Act can be exercised in the absence of framing of any rules under the said Section. A close scrutiny of Section 39(1) makes it very clear that the Commissioner shall have power to transfer in accordance with such rules as may be made by the Government. The words "may be made by the Government" employed in the Section only indicate that in case rules are made, transfers should be effected only in accordance with those rules, and, if no rules are made, the substantive power conferred on the Commissioner will not become redundant and still the Commissioner can exercise the power of transfer. The said aspect has already been considered in the judgments of this court in **P.S.R.Subrahmanyam v. Commr., Endowments (3 supra), A.B.Srinivasan v. State of A.P. & Ors. (4 supra),** relied on by the learned Advocate-General. In P.S.R.Subrahmanyam's case, a Division Bench of this Court held thus:

> ".....The petitioners are working in several Institutions. The power to appoint and transfer such offers vests with the Commissioner to transfer such official from one Institution to another without affecting their service conditions. When once power is conferred on a particular authority, here, the Commissioner, in the matter of appointment of its employees, such an authority has got powers to transfer. Apart from this, Section 39 of the new Act is quite clear s to the powers of Commissioner for transfers. The assertion of the learned Counsel for the petitioners that unless rules are framed under the present new Act, as

framed under the old Act, in the matter of transfer, the Commissioner does not get jurisdiction and the present transfers as such are without jurisdiction in the absence of rules as contemplated under Section 39 of the Act, has no force. When it is not in dispute that an authority who appoints will have the power to transfer, mere absence of Rules will not render the power of transfer of such officer illegal. A close reading of Section 39(1) makes it clear that the transfers may be made. The word used in respect of framing of Rules is 'may' but not 'shall'. After all making the Rules is only to avoid confusion or ambiguity in carrying out the purport of the Act more effectively. In other words, it is a procedural or internal regulation as to how the authorities have to discharge the powers and by whom the power has to be exercised. When the transfer is within the ambit of the power of appointment, absence of rules dealing with the transfers will not make such transfers illegal."

In **A.B.Srinivasan v. State of A.P. & Ors. (4 supra),** another Division of this Court referring to the decision in P.S.R.Subrahmanyam's case and also a decision of the Supreme Court in **Surinder Singh v. Central Government** wherein the Apex Court observed thus:

> "Where a statute confers powers on an authority to do certain acts or exercise power in respect of certain matters, subject to rules, the exercise of power conferred by the statute does not depend on the existence of Rules unless the statute expressly provides for the same. In other words framing of the rules is not condition precedent to the exercise of the power expressly and unconditionally conferred by the statute. The expression "subject to the Rules" only means, in accordance with the rules, if any. If rules are framed, the powers so confirmed on authority could be exercised in accordance with these rules. But, if no rules are framed there is no void and the authority is not precluded from exercising the power conferred by the statute."

and agreeing with the view expressed in P.S.R.Subrahmanyam's case, added that the absence of Rules governing transfers does not place the exercise of power in jeopardy nor does it create a vacuum in exercising effective control over the staff for the purpose of ensuring the proper administration of the religious and charitable institutions.

Thus, the language employed, i.e. 'may' in sub-section (1) of Section 39 of the Act and the decisions of the Division Benches of this Court clinches the issue as to the exercise of power by the Commissioner in the absence of framing of any rules in that regard. Therefore, undoubtedly, the Commissioner has power to effect transfers as provided in Section 39 of the Act even in the absence of the rules. Such a power is also implicit in Section 8 of the Act whereunder the Commissioner is empowered to pass any order, which may be deemed necessary to ensure that such institutions and endowments are properly administered.

The next question that arises for consideration is whether the transfers in question will affect the seniority and promotional avenues of the petitioners.

In the counter affidavit, it is clearly stated that though the Office Holders and servants are transferred from their parent establishment to other institutions, but for the purpose of seniority, their lien is maintained in the parent institution and promotions will be effected as per their turn in the parent-institution. In that view of the matter, though by virtue of the orders of transfer, petitioners are required to work in different institutions than their parent establishments, but, so long as their seniority is maintained in their parent institutions and promotions are effected as and when their turn comes up in the parent institution, their service conditions are not adversely affected. That apart, Rule 33 of the Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Office Holders and Servants Service Rules, 2000, framed under Section 35 (4) of the Act, gives protection only for the purpose of

recruitment, seniority and promotion, and, it does not in any way deal with the transfers, for which, express provision has been made in Section 39 of the Act, and, so long as the protection as provided in Rule 33 is extended, there cannot be any grievance for the petitioners.

The decision in **General Officer, Commanding-in-Chief v. Subhash Chandra (2 supra),** relied on by the learned counsel for the petitioners, wherein the Honourable Apex Court held that the Cantonment Boards are autonomous bodies, the service under Cantonment Board is neither a centralized service nor is it a service at the State level and any such transfer of an employee will mean termination of service of the employee in the Cantonment Board from where he is transferred, is not applicable to the case on hand, as in the instant case, the Commissioner is expressly conferred with the power of transferring the Office Holders and Servants from one institution to another institution under Section 39 and under Section 8 of the Act, he has the power of general superintendence over all Charitable and Hindu Religious institutions and endowments which shall include the power to pass any order which may be deemed necessary to ensure that such institutions and endowments are properly administered.

Though it is stated that there were orders of ban, but the said orders are in the nature of administrative instructions and such instructions will not come in the way of the competent authority to effect transfers for the better administration of the institutions governed by the provisions of the A.P.Charitable and Hindu Religious Institutions and Endowments Act, 1987. In a number of cases, it is also stated that the Office Holders are transferred on the verge of their retirement and individual hardships are also expressed on account of serious ailments to the members of their family and the availability of medical facilities for treatment of such illness. But, they are not the grounds germane for interference by this court with the orders of transfer in exercise of the power under Article 226 of the Constitution of India. It is well settled that interference with the orders of transfer can be made only if the transfer is made with mala fide intention or without having competence or when it intends to affect the conditions of service of the incumbent transferred. The transfers are made for better administration of the institutions in view of unearthing of some of the incidents and the protection afforded by Rule 33 of the Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Office Holders and Servants Service Rules, 2000 is not meddled with. Moreover, transfer is an incidence of service and no employee can claim that he will work only at a particular place.

For the foregoing reasons, I do not find any merit in the contentions raised by the petitioners and all the writ petitions are dismissed, but without any order as to costs.

However, as, in many of the cases individual hardships are expressed, I leave it open to the petitioners to make representations to the Commissioner detailing their circumstances and grievances for reconsideration and review of the orders of transfer, and, if such representations are filed, the Commissioner is at liberty to consider such representations and pass appropriate orders.

--4—2007 **R.SUBHASH REDDY, J.**

LR COPIES TO BE MARKED: YES/NO

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[1] (2001) 8 SCC 574

[2] AIR 1988 SC 876

[3] 1997 (6) ALD 57 (DB)

[4] 1998(2) ALD 640 (DB)

[5] (1997) 6 SCC 312

[6] AIR 1986 SC 2166

[7] 1986 (2) SLR 60

[8] 1991 Supp. (1) SCC 343